KERAJAAN MALAYSIA

v.

MOHD. MOKHTAR B. ALI

HIGH COURT MALAYA, IPOH
DATO' ABDUL HAMID BIN EMBONG JC
[ORIGINATING SUMMONS NO. 24-106-92]
28 SEPTEMBER 1995

LAND LAW: *Application for sale by way of public auction of charged land - Application made pursuant to s. 265(3) of the National Land Code 1965 - Defendant opposing application - Whether plaintiff's refusal to transfer the defendant's loan to his wife proper - Consideration of s. 5(1) of the Housing Loans Fund Act 1971 - Whether plaintiff had made representations that they would not revise the interest rates - Whether defendant had acted on such representation - Whether this amounted to cause to the contrary - Whether plaintiff estopped from raising the interest rate payable - Consideration of conditions necessary to found estoppel.*

The defendant was granted a government housing loan and the land was charged to the plaintiff as security for the repayment of the loan. The defendant subsequently resigned from his government post and sought and obtained the government's approval to repay the loan by instalments as usual after his resignation. The defendant was then given notice that the interest rate for his housing loan had been raised and he made several appeals against the increase in the interest rate which appeals were rejected by the Bahagian Pinjaman Perumahan (BPP). The defendant alternatively sought the transfer of his loan to his wife, who was still in government service, but this too was rejected by the BPP.

Subsequent to a written notice of demand the plaintiff initiated proceedings for a sale of the land by way of public auction under s. 260 of the National Land Code 1965 (NLC 1965). After two unsuccessful auctions the plaintiff made the present application under s. 265(3) of the NLC 1965 for an order for sale.

The defendant opposed the application on the ground that the plaintiff had refused to transfer the defendant's loan to the latter's wife and that the plaintiff is estopped from raising on the loan due to BPP's letter dated 23 March 1983.

Held:

[1] A government housing loan is a privilege given to persons enumerated in s. 5(1)(a) to (j) of the Housing Loans Fund Act 1971 (HLFA) provided they satisfy the conditions thereto. Pursuant to s. 5 of the HLFA various terms and conditions have been drawn up by way of Treasury Circulars including Surat Pekililing Perbendaharaan Bil. 21 Tahun 1981 (SPP 25/81).

It is clear from the provisions of SPP 25/81 that the Treasury would not entertain any application for a housing loan for the purpose of purchasing property belonging to a spouse. In the circumstances there was no basis for the defendant to succeed on the ground that the plaintiff refused to transfer the defendant's loan to the latter's wife.

[2] To found estoppel two conditions must be satisfied namely, that there must be representation made with the intention of inducing a person to alter his position and the person to whom the representation was made must have relied on it to alter his position. In the present case it was obvious from the defendant's letter dated 15 March 1983 that he had already left his job for a new one on that date. In the circumstances, to say that the defendant had relied on the representation made by the plaintiff by way of BPP's letter of 23 March 1983 to resign his position by 15 March 1983 was preposterous and clearly contrary to the facts. Clearly the defendant had acted on his own accord and had not relied on any representation when he resigned his position and in the circumstances there was no basis to plead estoppel here.

[3] Even though the plaintiff had permitted the defendant to continue with the housing loan which he had obtained as a government servant, that permission did not preclude the plaintiff from enforcing the terms of the charge relating to variation of interest. Interest rates may be increased or reduced by the plaintiff as chargee upon notification to the defendant chargor. There can be no other construction to clauses 5 & 6 of Annexure E to the charge other than that of giving the plaintiff chargee an unfettered right to vary the interest "at any time and from time to time".

[4] The equitable maxims "he who raises an equitable estoppel must do equity himself, otherwise equity will not assist him" and "he who comes to equity must come with clean hands" require a litigant seeking this remedy not to be guilty of improper conduct in regard to the subject matter of the litigation. In the present case the defendant had failed to make any repayment at all of the loan either at the old interest rate or at the varied interest rate since May 1985. The defendant has not performed his part of the agreement and his conduct is left wanting for him to seek relief in equity. In any event the onus of proving estoppel was on the defendant which onus he had failed to discharge on the facts.

[Plaintiff's application for order for sale allowed with costs].

Cases referred to:

Keng Soon Finance v. Retnam Holdings Sdn. Bhd. & Anor. [1989] 1 CLJ 897, [1989] 1 MLJ 457 ***(cons)***

Kewangan Usaha Bersatu Berhad v. Makok Development Sdn. Bhd. ***(cons)***

Muthiah v. Lee Kor Fan [1966] 1 MLJ 105 ***(refd)***

Liew Ah Hock v. Malayan Railway [1967] 1 MLJ 53 ***(refd)***

Legislation referred to:
Housing Loans Fund Act 1971, ss. 5(1)(a)-(j)
National Land Code 1965, ss. 260, 261, 265(3), 265(3)(c)

Other source referred to:
Halsbury Laws of England, 4th Edn., Reissue

For the plaintiff - Jagjit Singh, SFC
For the defendant - M/s. Bachan & Kartar

JUDGMENT

Abdul Hamid Embong JC:

By an originating summons (encl. 2) the plaintiff applied for an order that the defendant's land, held under HS(M) 3/82, PT WO 591, Mukim Sungai Trap, Daerah Kinta, Perak, (the said land) be sold by way of public auction. The application is supported by plaintiff's first affidavit affirmed by Norazlan b. Ahmad on 10 February 1992 (encl. 1), plaintiff's affidavit in reply to the defendant's affidavit affirmed by Vignaswaran a/1 Kandiah on 1 March 1993 (encl. 17) and plaintiff's supplementary affidavits affirmed by Lee Yoke Geet on 25 February 1995 (encl. 28) and 8 July 1995 (encl. 33). The defendant's opposition is supported by his affidavit affirmed on 8 December 1992 (encl. 14).

The facts which are not in dispute are as follows.

The said land was charged to the plaintiff on 17 September 1982 (the said charge) at the Land Office Kinta as security for the repayment to the plaintiff, (chargee) of a government housing loan amounting to RM64,306 extended to the defendant by the plaintiff (chargor).

The defendant resigned from his Government post as a public technician of Jabatan Kerja Raya Kinta on 10 March 1983. The defendant had on 15 March 1983 written to Bahagian Pinjaman Perumahan (BPP) i.e., the division in the Treasury that handles all government housing loans, that in view of his accepting an offer for the post of a trainee technical assistant with Syarikat Pembinaan KIE-Tokyu Joint Venture with effect from 1 May 1983, the defendant was forced to resign from his technician's post with JKR Kinta and that the Ketua Setiausaha Kementerian Kerjaraya & Kemudahan Awam, Kuala Lumpur, his department head, was to stop making monthly repayment deductions amounting to RM339.44 every month and on the other hand the defendant will continue the monthly repayment by way of Postal Money Order or deductions to be made by his new employer. (See Exh. 8 to encl. 14).

BPP on 23 March 1983 replied allowing the defendant to repay the loan by instalments as usual after the defendant's resignation (see Exh. c to encl. 14).

Subsequently BPP by way of notice dated 31 January 1985, informed the defendant that the interest rate for his housing loan had been raised to 10% per annum with effect from February 1985 and due to that his monthly instalment had been increased to RM568.77 per month. By a notice dated 20 June 1987 the interest rate was reduced from 10% to 9% per annum with effect from 1 July 1987. Thereafter by a notice dated 3 January 1989 the interest rate was further reduced from 9% to 7% per annum (Exh. LYG 2A, 2B, 2C, respectively in encl. 28).

The defendant made several appeals against the increase of the interest rate or alternatively that his housing loan be transferred to his wife but both the appeals were rejected by BPP (Exh. E, F, G, H, I, J & K to encl. 14).

On 12 November 1988, BPP gave the defendant a written notice of demand and required the repayment of RM83,160.03 outstanding as at 30 November 1988 (Exh. VK1, encl. 17). The notice was not complied with.

On 8 December 1989 BPP served the defendant the statutory notice in form 16D of the National Land Code 1965 (NLC).

On 19 May 1990 plaintiff applied in Form 16G to the Pentadbir Tanah Kinta for an order that the said land be sold by way of a public auction under s. 260 of the NLC (Exh. NA3 encl. 1).

Consequently an inquiry under s. 261 of the NLC was carried out by the Pentadbir Tanah Kinta whereby he ordered the said land to be sold by way of a public auction on 20 May 1991 at a reserve price of RM54,000. This first auction was unsuccessful.

Thereafter a second auction was conducted on 19 July 1991 at the same reserve price of RM54,000. The second auction was also unsuccessful.

The Pentadbir Tanah Kinta on 22 August 1991 then issued a certificate of reference under s. 265(3)(c) of the NLC (Exh. NA4 encl. 1).

The application is made pursuant to s. 265(3) NLC which reads:

> (3) If at the subsequent sale no bid is received at or above the reserve price -
>
> (a) the land or lease shall be withdrawn from the sale;
>
> (b) the Collector shall refer the matter to the Court; and the Court may substitute for the order of the Collector an order for the sale under s. 256, or make such other order as it may think just.

As at 25 July 1995 i.e., the hearing date of this summons, the total outstanding debt owed by the defendant is RM111,221.31 at an interest of 7% per annum (see encl. 33).

The defendant had initially in his affidavit at encl. 14 forwarded three grounds of defence namely:

(i) that the plaintiff's action is statute-barred

(ii) that the plaintiff had refused to transfer the defendant's loan to the latter's wife, and

(iii) that the plaintiff is estopped from raising the interest rate from 4% to 10% due to BPP's letter dated 23 March 1983 (Exh. c to encl. 14).

When the matter came up for hearing, learned Counsel for the defendant abandoned ground (i) above.

As to ground (ii) above, the defendant had *vide* his letter dated 31 July 1985 applied for his loan to be taken over by his wife who is also a government servant (Exh. G, encl. 14). This application was refused by the plaintiff, *vide* their letter dated 24 September 1985 (Exh. H, encl. 14). The defendant contended that the plaintiff had a choice.

I find that the government housing loan is a privilege given to persons enumerated in s. 5(1)(a) to (j) of the Housing Loans Fund Act 1971 (HLFA) provided they satisfy the conditions thereto. Section 5(j)(a) of the HLFA reads:

> 5. The moneys of the fund shall be applied and are hereby appropriated for the purpose of granting loans upon such terms and conditions as the Minister of Finance may think fit for to any person:
>
> (a) who is a member of the public services referred to in Art. 132 of the Federal Constitution.

Pursuant to s. 5 of the HLFA various terms and conditions have been drawn up by way of treasury circulars which, *inter alia,* includes Surat Pekeliling Perbendaharaan Bil. 25 Tahun 1981 (SPP 25/81).

The relevant provisions of SPP 25/81 reads:

> 2. Mulai dari 11 November 1981, Kementerian Kewangan dan lain-lain agensi kerajaan yang memberi pinjaman perumahan mengikut Sekim Pinjaman Perumahan Kerajaan **tidak akan melayani** permohonan-permohonan seperti berikut:
>
> 2.1 Pembelian harta suami atau isteri;
>
> 2.2 Pembelian harta saudara-mara yang rapat hubungannya; iaitu daripada ibu, bapa, anak dan adik-beradik.

It is clear from the above provisions that the Treasury would not entertain any application for a housing loan for the purpose of purchasing property belonging to a spouse. I find that it is necessary in considering the defendant's

affidavit, to rule that there is no basis for this ground to succeed, although his learned Counsel had appropriately chosen not to reply to the Senior Federal Counsel's submission to this issue.

On the issue of estoppel, the defendant adverted to the BPP's letter of 23 March 1983 (Exh. C of encl. 14) wherein it was contended that the plaintiff had allowed him to continue with the outstanding repayment at RM339.44 monthly, for 298 months. The upward variation of interest to 10% *vide* BPP's letter dated 31 January 1985 (Exh. C of encl. 14), it was submitted, was contrary to the representation made by the plaintiff *vide* their letter at Exh. 'C', since the defendant had agreed to accept the terms set therein. It was further argued that acting on this representation the defendant had resigned his position in the government service. This, it was added, amounted to a cause to the contrary as decided by the Privy Council in *Keng Soon Finance v. M.K. Retnam Holdings Sdn. Bhd. & Anor*. [1989] 1 MLJ 457 where it was held that:

> The Court 'shall' order a sale unless it is satisfied of the existence of 'cause to the contrary'. Granted that these words have been construed in Malaysia as justifying the withholding of an order where to make one would be contrary to some rule of law or equity, ...

Learned defence Counsel also referred to the case of *Kewangan Usaha Bersatu Berhad v. Makok Development Sdn. Bhd.*, where the facts show that there had been negotiations between the parties resulting in the defendant chargor making a lump sum payment. There was also an assurance made by the general manager of the plaintiff company that no action would be taken since the defendant had made a payment. The issue before the Court there was whether the plaintiff was estopped by its conduct or representation. It was held (Lim Beng Choon J) that:

> Based on the equitable doctrine of estoppel by conduct or representation, K (the plaintiff) cannot be allowed to go back on what its general manager had said and done when it would be unjust or inequitable for it to do so.

In that case it is clear that the plaintiff had made a representation which was acted on by the defendant and so the doctrine was applicable against them.

As to this kind of equitable estoppel, *Halsbury Laws of England* (4th Edn., Reissue) explains its meaning such:

> 955. Estoppel in pais
>
> Where a person has by words or conduct made to another a clear and unequivocal representation of fact, either with knowledge of its falsehood or with the intention that it should be acted upon, or has so conducted himself that another would, as a reasonable person, understand that a certain representation of fact was intended to be acted upon, and the other person has acted upon such representation and thereby altered his position to his prejudice, an estoppel

arises against the party who made the representation, and he is not allowed to aver that the fact is otherwise than he represented it to be.

The conduct relied upon as amounting to a representation may be negligence. This can give rise to an estoppel only where there is a duty to the person complaining to use due care; and it is further necessary that the neglect should be in the transaction itself which is in dispute, calculated to lead, and in fact leading, as its real cause to the belief created.

From the above it is clear that, to found estoppel two conditions must be satisfied namely:

(i) that there must be a representation made with the intention of inducing a person to alter his position or in short there must be a holding out, and

(ii) that the person to whom the representation was made must have relied on it to alter his position or in short there must be reliance.

Estoppel may either be by conduct or statement, the former including negligence. It must however be clear and unambiguous and intended to be acted upon. See *Muthiah v. Lee Kor Fan* [1966] 1 MLJ 105 where MacIntyre J stated that:

Again in law, one of the constituent elements of estoppel is that the representation should be made with the intention of inducing the person pleading estoppel to alter his position to his detriment.

It is now necessary to see the facts forming the antecedents to the defendant resigning his position as a technician with JKR Kinta in order to determine whether estoppel arises.

In my view, the starting point would be his letter of 15 March 1983 (Exh. B to encl. 14) which clearly stated his intention of resigning. Paragraph 2 of the said letter is pertinent and I reproduce:

2. Saya telah menerima satu tawaran bagi memenuhi jawatan sebagai Trainee Technical Assistant dari Syarikat Pembinaan KIE-Tokyu Joint Venture di 10-U, Jalan Maxwell, P.O. Box 419, Ipoh, Perak, bermula pad lhb Mei 1983. Dengan ini saya terpaksa melepaskan Jawatan saya sebagai Juruteknik di Jabatan Kerja Raya Kinta, Ipoh bermula dari tarikh yang disebutkan di atas. Dengan ini Ketua Setiausaha Kementerian Kerjaraya & Kemudahan Awam, Kuala Lumpur terpaksa memberhentikan potongan ansuran bayaran balik sebanyak RM339.44 pada tiap-tiap bulan dan sebaliknya saya akan meneruskan pembayaran pada tiap-tiap bulan melalui 'Wang Kiriman Pos' atau potongan pembayaran ini akan dibuat oleh Majikan tempat saya bekerja KIE-Tokyu Jv. Construction, 10-U, Jalan Maxwell, P.O. Box 419, Ipoh, Perak.

It is obvious from the above that when the defendant wrote this letter on 15 March 1983 he had already left his job for a new one. It is also clear that the defendant there made a proposal for a continuation of repayment of his loan by a monthly deduction on his salary to be effected by his new employer.

This is not a statement of his intent or even an application to leave his job.

To say that the defendant had relied on the representation made by the plaintiff to resign his position as submitted by defence Counsel, is preposterous and clearly contrary to the facts. The contents of his letter speak for itself. The position is further amplified by his letter of appeal to the then Deputy Minister of Finance dated 15 April 1985 (see Exh. E to encl. 14). Extract from the said letter is now reproduced.

The opening line states:

> Adalah dengan segala hormatnya merujuk saya kepada perkara tersebut di atas, saya telah meninggalkan perkhidmatan kerajaan pada **10hb Mac 1983.**

Further on in the same Exh. 'E':

> 4. Saya mengambil keputusan bagi meninggalkan perkhidmatan kerajaan sebagai Juruteknik di Jabatan Kerja Raya dan berkhidmat dengan Syarikat KIE-Tokyu Jv. adalah **semata-mata untuk menyahut seruan kerajaan iaitu "Dasar Pandang Ke Timur" dengan objektif supaya mendapatkan pemindahan Teknologi Jepun** dan Ethic of Work kepada tenaga-tenaga mahir tempatan khasnya Bumiputra" (bersama-sama ini saya sertakan surat dari pihak Pemaju Syarikat Peradu (Gelombang) Perak Sdn. Bhd., anak syarikat Perbadanan Pembangunan Negeri Perak). (Emphasis added).

Exhibit E merely confirms what I had found from Exh. B. When the defendant wrote Exh. B on 15 March 1983, he had in fact resigned from his position, the effective date according to him in Exh. E was 10 March 1983. Further his reason for so doing was, in his own words, purely to accede to Government's call in its 'Look East Policy'.

He then went on to contradict himself and in the process blatantly lied to the Deputy Minister when he stated further in Exh. E thus:

> 4. Saya **mungkin** tidak akan meninggalkan perkhidmatan kerajaan andainya tidak menerima surat berupa akuan yang mana saya boleh meneruskan ansuran seperti yang telah ditetapkan sebanyak RM339.44 sebulan selama 25 tahun melalui surat Perbendaharaan bil. (28) dlm. PP. 12025/82/2. (Salinan photostat surat tersebut disertakan) (Emphasis added).

How could he say that when he had already resigned on 10 March 1983, and later on 15 March 1983 had written to BPP to propose the mode of repayment on his housing loan. Exh. C to encl. 14 dated 23 March 1983 is

the letter of reply from BPP, allowing him to continue with his monthly repayments. Clearly the defendant had acted on his own accord and had not relied on any representation when he resigned his position. The BPP's letter of 23 March 1983 was written after his resignation and he cannot now say that he had altered his position from the representation made therein, if at all there was one made.

My finding therefore is that there is no basis to plead estoppel here.

Next it was argued that the plaintiff is estopped from varying the interest rate.

In their reply to defendant's letter of 15 March 1983 (Exh. C) the plaintiff wrote thus:

> 2. Adalah dimaklumkan bahawa, tuan/puan boleh membuat ansuran bayaran balik seperti biasa walaupun tuan/puan telah meletakkan jawatan.
>
> 3. Sekiranya tuan/puan ingin menyambung dengan pinjaman tuan/puan, tunggakan bayaran balik sebanyak ... bagi bulan ... serta faedah, mestilah diselesaikan selewat-lewatnya sebelum akhir bulan ... jika tidak, tindakan akan diambil untuk mendapatkan kembali semua baki pinjaman tuan/puan.
>
> 4. Sekiranya tuan/puan menyelesaikan tunggakan itu dalam tempuh yang ditetapkan, tuan/puan boleh membuat ansuran bulanan sebanyak RM339.44 sebulan mulai bulan Mei, 1983 hingga bulan Feb. 2008 iaitu untuk 298 bulan.
>
> 5. Bayaran balik hendaklah dibuat oleh tuan/puan sendiri terus menerus kepada Bahagian ini dan hendaklah disampaikan kepada pejabat ini tidak lewat dari 7hb pada tiap-tiap bulan yang berikutnya, jika tidak, faedah akan dikenakan atas kadar 12% dan tindakan akan diambil untuk mendapat kembali semua baki pinjaman tuan/puan.

It was submitted by Senior Federal Counsel that Exh. C did not in any way vary the terms and conditions of the loan agreement, in particular Annexure E to the charge (Exh. NA1 to encl. 1). Exhibit C was in fact issued pursuant to cl. 4.2 of Pekeliling Perbendaharaan Bil. 5 Tahun 1980 which reads:

> 4.2 Jika seseorang pemohon meninggalkan perkhidmatan ia boleh dengan kelulusan bertulis daripada Kementerian Kewangan meneruskan pinjaman yang telah diambilnya semasa dalam perkhidmatan atas syarat-syarat yang sama, dengan syarat pinjamannya terjamin sepenuhnya.

I entirely agree. I find that Exh. C merely allows for the continuation of the housing loan on the same terms and conditions stipulated in Annexure E to the charge, despite the defendant's resignation. No mention was made therein in respect of the variation of interest rate. The question of variation of interest is dealt with in cl. 6 of the said Annexure E which states:

6. Notwithstanding any other provisions herein contained, the principal sum hereby secured is lent or advanced upon the condition that the Chargee shall be entitled at any time and from time to time by serving a notice in writing on the Chargor of its intention so to do increase or reduce the rate of interest payable hereunder and in regard thereto the following provisions shall apply and have effect:

(a) Any increase or decrease in the rate of interest shall take effect and be payable as from the date specified in the said notice and shall be calculated as herein-before provided.

(b) In lieu of the monthly instalments referred to in clause 1 of this Charge the Chargor shall as from the expiry of such notice pay such increased or reduced monthly instalments as shall be appropriate having regard to the alteration effected in the rate of interest payable.

(c) The Chargor may at his option elect to treat such notice as a notice requiring payment of all moneys then secured by the Charge but in that event he shall give written intimation of such election to the Chargee within one month of the date of service of the notice and shall on the expiration of the notice redeem the said land by making payment as specified in clause 4(b) hereof.

(d) The decision of the Chargee as to what at any time is the rate of interest chargeable shall be final and conclusive and shall not be questioned on any account whatsoever.

This clause needs to be read together with clauses 1 and 5 of Annexure E which state:

1. The said land is together with the buildings now and/or from time to time erected thereon charged for the benefit of the Chargee with the repayment on demand of the sum of Ringgit **Sixty Four Thousand Three Hundred and Six only (RM64,306)** lent to or advanced for the benefit of the Chargor by the Chargee in one sum or by progress releases as and when the Chargee is satisfied that the state of the building on the said land justifies the advance (which said sum is hereinafter referred to as "the principal sum") together with interest thereon calculated as hereinafter provided and all such sums and moneys as are or may become payable by the Chargor with this Charge and in particular (but without limiting the generality of the foregoing) all costs charges expenses and other sums and moneys mentioned in clause 10 hereof but it is hereby mutually agreed that until such demand is made as herein provided, the chargor shall pay the principal sum and all interest thereon as hereinafter provided by monthly instalments of Ringgit **Three Hundred and Thirty Nine and Cents Forty Four only (RM339.44)** (hereinafter referred to as "the said instalments") or such other amount as may be determined in accordance with clause 4 or clause 6 hereof until the whole of such principal sum and all interests shall be fully paid and satisfied provided that the instalments shall be paid on such dates as shall be stipulated by the Chargee by notice in writing to the Chargor.

5(a) Interest on all moneys secured by this Charge shall be paid at the ruling rate which expression shall mean interest at the rate of four per centum (4%) per annum calculated on a monthly rests basis or at such other rate as the Chargee acting in accordance with the provisions of this Charge may require the Chargor to pay.

In my view, even though the plaintiff had permitted the defendant to continue with the housing loan which he had obtained as a government servant, *vide* Exh. C, that permission did not preclude the plaintiff from enforcing the terms of the charge as stipulated in the aforecited clauses. Interest rates may be increased or reduced by the plaintiff as chargee upon notification to the defendant chargor. If the defendant's proposition that the plaintiff was estopped from varying the interest rate were correct, then a situation would arise that whilst the government may vary upwards interests on housing loans of serving government servants, it may not do so in respect of loans taken by those who had resigned from government service. This is ludicrous as it is unjust. Clearly this is not what is intended by clauses 5 and 6 stated above.

It is my considered opinion that there can be no other construction to the said clauses than that of giving the plaintiff chargee an unfettered right to vary the interest "at any time and from time to time". Of course, whenever there is a downward variation of the interest the defendant also stood to gain as well. This benefit to the defendant was clearly demonstrated when the interest rate on his loan was reduced from 10% per annum to 9% per annum with effect from 1 July 1987, and subsequently to the current 7% per annum as of 1 January 1989 (see Exh. LYG2A, 2B, 2C, encl. 28).

The defendant had failed to make any repayment of the loan at all either at the varied interest rate or even at 4% since May 1985. As of the date of hearing the total outstanding amount stood at RM111,221.31 (See Exh. LYG4, encl. 33).

I find that the defendant had not performed his part of the agreement. In *Liew Ah Hock v. Malayan Railway* [1967] 1 MLJ 53, Winslow J, said:

> Next, the authors (referring to Spencer Bower and Turner in the *Law Relating to Estoppel by Representation*) discuss a further proposition, to wit, that he who raises an equitable estoppel must do equity himself: otherwise equity will not assist him.

The abovementioned maxim and similarly 'he who comes into equity must come with clean hands', require one seeking this remedy not to be guilty of improper conduct in regard to the subject matter of litigation. The defendant's own conduct here is left wanting for him to seek relief in equity.

The onus of proving estoppel was on the defendant, which on the facts he had failed to discharge (See *Muthiah v. Lee Kor Fan, supra*).

The plaintiff has made out its case and I therefore order in terms of the prayers set out in encl. 2 with costs.